

**ELIZABETH SNIDER ALLEN,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,**  
*Respondent.*

**RULING  
ON  
MOTION FOR  
SUMMARY  
JUDGMENT**

Case No. 98-0178-PC

This matter is before the Commission on the respondent's motion for summary judgment regarding an appeal of a reallocation decision. The parties have filed written arguments.

Respondent issued a reallocation notice to appellant informing her that her position was being reallocated from Administrative Officer 1 to DOA Administrative Coordinator - 1, effective November 8, 1998. A prehearing conference was held on February 16, 1999. The conference report indicates the following:

Based upon the statements of the appellant during the course of the prehearing conference, the undersigned identified the following statement as describing the appellant's allegations:

Whether the respondent's decision to reallocate the appellant's position to DOA Administrative Coordinator 1, rather than to Information Technology Management Consultant, Information Systems (C) Comprehensive Specialist, Information Systems (C) Program Area Specialist, or Administrative Policy Advisor 2, was correct.

The appellant agreed to indicate, in writing and no later than March 9, 1999, if she is not pursuing any of the above alternative classifications.

Appellant also indicated she felt her position description was not an entirely accurate description of her duties. The undersigned advised the appellant to work on her position description so that she feels it is an accurate description of her duties. (The undersigned also notes that this

revised position description might be an appropriate submission if respondent files a motion for summary judgment.)

By memo dated March 9, 1999, the appellant wrote the Commission and stated she was "not considering the IT Management Consultant classification," but the "IS (PC) Enterprise Strategic Planning Specialist is a better fit."

By letter dated March 10<sup>th</sup>, a member of the Commission's staff wrote the parties as follows:

The Commission has received the appellant's March 9, 1999, memo. I understand that appellant wishes to withdraw the reference in the issue for hearing to Information Technology Management Consultant, and to add a reference to IS (PE) Enterprise Strategic Planning Specialist. Therefore, if my understanding is correct, the appellant requests that the issue for hearing read:

Whether the respondent's decision to reallocate the appellant's position to DOA Administrative Coordinator 1, rather than to Information Systems (C) Comprehensive Specialist, Information Systems (C) Program Area Specialist, Information Systems (PE) Enterprise Strategic Planning Specialist or Administrative Policy Advisor 2, was correct.

If I am misunderstanding the appellant's proposal, she must notify me (and [respondent's representative]) no later than March 18, 1999. If respondent has any objection to the appellant's proposal, the respondent must file its objection no later than March 26, 1999.

The appellant did not notify the Commission nor did respondent object to the revised issue as proposed.

## OPINION

### I. Request to modify issue

In her brief dated May 17, 1999, appellant states:

I am requesting permission from the Personnel Commission to allow me to reverse my non-consideration or re-instate consideration of the Information Technology Management Consultant classification which I earlier said I am not pursuing. After doing my own analysis and based

on the information DER presented and the information DER failed to present, I believe the Information Technology Management Consultant classification is a perfect fit for my position.

Respondent objects to consideration of the IT Management Consultant classification, noting that appellant "cannot continue fishing for a classification that she feels is a better fit just because the arguments presented in Respondent's Motion conclude her position does not fit those she requested."

Appellant is essentially asking that she be permitted to return the Information Technology Management Consultant (ITMC) classification into the mix of class titles considered by the Commission when reviewing the respondent's reallocation decision. Appellant's request was made during the briefing schedule on respondent's motion for summary judgment, but a hearing date has not been set and respondent has not shown it would be prejudiced if the request is granted. The Commission also notes that the appellant is representing herself in this matter. In a reallocation case, the respondent is viewed as having selected one classification from among the universe of potential state classifications, so the appellant may identify any alternative classification for the Commission to consider on appeal. *See Saindon v. DER*, 85-0212-PC, 10/9/86.

The circumstances of the present case are comparable to those in *Nunnelee v. Knoll*, 75-77, 3/22/76, where the Commission's predecessor, the Personnel Board, was petitioned by the appellant to add issues for hearing beyond the issue that had been agreed to at the prehearing conference. In agreeing to reopen the stipulation as to issues, the Board stated:

We conclude that a party may be relieved of the obligations of a stipulation in certain circumstances. *See 73 Am. Jur.2d Stipulations* §14:

It is generally held that relief may be afforded from a stipulation which has been entered into as the result of inadvertence, improvidence, or excusable neglect, provided that the situation has not materially changed to the prejudice of the antagonist and that the one seeking relief has been reasonably diligent in doing so.

*See also Schmidt v. Schmidt*, 40 Wis. 2d 649, 654, 162 N.W.2d 618 (1968):

The discretion of the trial court to relieve parties from stipulations when improvident or induced by fraud, misunderstanding or mistake, or rendered inequitable by the development of a new situation, is a legal discretion to be exercised in the promotion of justice and equity, and there must be a plain case of fraud, misunderstanding or mistake to justify relief.

The authorities further distinguish among different types of stipulations, being more ready to relieve a party of the obligations of a stipulation as to procedural matters than stipulations as to settlement: "It has been noted that more liberality in the granting of relief as to procedural matters is evident where no prejudice will result and the best interests and convenience of the parties, and expedition of the proceedings will result." 73 Am. Jur. 2d Stipulations §15

Because nothing indicates respondent would be prejudiced by considering the ITMC class and because no date for hearing has been set, the appellant will be permitted to revise the issue to include the ITMC classification. *See Novak v. DER*, 83-0104-PC, 2/29/84.

## II. Method of analysis

In *Swim & Wilkinson v. DER*, 92-0576, 0613-PC, 5/15/95, the Commission summarized the approach it follows in analyzing a motion for summary judgment:

On summary judgment the moving party has the burden to establish the absence of a genuine, that is, undisputed issue as to any material fact. On summary judgment the court does not decide the issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as leaves no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Doubts as to the existence of a genuine issue of material fact should be resolved against the moving party for summary judgment.

The papers filed by the moving party are carefully scrutinized. The inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion. If the movant's papers before the court fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment. *Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980) (citations omitted)

[S]pecial caution . . . must be exercised in summary judgment procedure in an administrative proceeding, *see Balele v. UW-Madison*, 91-0002-PC-ER, 6/11/92 ("particular care must be taken in evaluating each party's showing on the motion to ensure that complainant's right to be heard is not unfairly eroded by engrafting a summary judgment process designed for judicial proceedings.")

### III. Appellant's duties

The appellant is employed in the Department of Administration's (DOA) Division of Technology Management Operations. The appellant reports to Marilyn Pierce who, in turn, reports to the Deputy Administrator of the Division.

In her affidavit in response to the motion for summary judgment, appellant states: "DER did not base the reallocation decision on a current, accurate position description." Respondent's reallocation decision was effective November 8, 1998. Appellant's most recent "official" (i.e. approved and signed) position description was signed by appellant on September 15, 1997. Appellant prepared an unofficial and unsigned position description in November of 1998. Both position descriptions were filed with the Commission as attachments to respondent's motion. The February 16, 1999, prehearing conference report reflected the appellant's view that her official position description was not "entirely accurate." Appellant was given an opportunity to prepare and submit a revised position description but did not do so. Given these circumstances and the Commission's responsibility to consider the submissions in the light most favorable to appellant, the Commission will base its analysis of respondent's

motion on the unsigned and undated position description prepared in November of 1998.<sup>1</sup> That document includes the following:

**Position Summary**

This position is located in the Administrator's Office in the Division of Technology Management [Department of Administration] and, under general supervision, is responsible for difficult administrative and advanced staff assistance work that support the Division's business goals and objectives. The Division of Technology Management is responsible for a wide variety of enterprise information technology management functions and is mandated to set basic infrastructure IT standards and long-range IT and business planning, analyze and design business-related systems. The Administrator's office also is responsible for the development and implementation of statewide education and development programs for executive, professional and technical staff, training budget development, procurements, space management, personnel and policy and procedure development. This position performs highly responsible cost analysis and highly complex executive, liaison and staff functions. This position will consult on operational and procurement needs and manage and implement solutions. It provides consultation cross-bureau to IT Managers, technical and professional staff and administrative support staff on matters both internal and external to the Division of Technology Management.

25% A. Perform highly responsible administrative and management work and serve as consultant for planning, administration and management of Division of Technology Management day-to-day operational efficiency and project work.

45% B. Manage and direct a Division procurement program that provides consultation and technical assistance to all DTM staffs in acquiring the goods and services necessary for DTM to carry out business and strategic goals in enterprise management of information technology in State government.

C. 25% Responsible for managing the solicitation process and contract administration.

5% D. Develop and coordinate special communications efforts and projects that support DTM programs and strategic goals.

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<sup>1</sup> Respondent notes that it was aware of, and considered the unsigned November position description when it made its reallocation decision.

5% E. Perform special assignments as they develop related to the primary functions of the position.

IV. Class specifications and summary judgment analysis

The relevant portions of the class specifications are set forth below, along with the analysis of those specifications in the context of the respondent's motion for summary judgment.

a. *DOA Administrative Coordinator 1*

B. Inclusions

The positions in this classification series are limited to those located within the Department of Administration and provide advanced administrative support in the area of policy formation, determination and implementation for specific program areas.

**II. DEFINITIONS**

**DOA ADMINISTRATIVE COORDINATOR 1**

The single position allocated to this classification level works under general review with objectives and priorities established by overall work unit directives and reports to the Chief of Education and Development in the Administrator's Office, Division of Technology Management. This position performs highly responsible administrative work and serves as an advisor for planning, administration and management of division operations, programs and services; directs the division's procurement program, providing consultation and advice and administrative assistance to all staff in the division; develops and coordinates major communications efforts and special projects for and evaluates programs relating to special projects and training and education programs; and monitors and evaluates enterprise education and training elements and effectiveness. Major responsibilities include developing policies and procedures for the program and assuring adherence with these policies and procedures.

This definition directly ties in to much of the language found in the appellant's November 1998 position description, including the references to the "Administrator's

Office in the Division of Technology Management . . . under general supervision. . . responsible for difficult administrative . . . work. . . . [E]ducation and development programs. . . . [P]erforms highly responsible . . . functions. . . . Perform highly responsible administrative and management work and serve as consultant for planning, administration and management of Division of Technology Management . . . operational . . . work. [D]irect a Division procurement program that provides consultation and technical assistance to all DTM staffs. . . . Develop and coordinate special communications efforts."

A class specification that specifically describes the duties and responsibilities of a position provides a closer fit than a specification that only generally describes such duties and responsibilities. *Dorsey et al. v. DER*, 94-0471-PC, etc., 1/23/96. Also, where certain class specifications were drafted with the appellant's position in mind, the conclusion that appellant was more appropriately classified at that level is buttressed. *Id.*

*b. Information Systems (C) Comprehensive Specialist and Information Systems (C) Program Area Specialist*

II. DEFINITIONS

For classification purposes, a position must meet the Level, the Job Family and the Classification Definition.

A. Level

IS SPECIALIST

Positions at this advanced level work under general review with objectives and priorities established by overall work unit directives. There is little review of technical recommendations and solutions by a supervisor. Positions at this level will assist Information Systems Consultants/Administrators and management by implementing technical policies, standards and procedures which impact on agency/campus IS functions. The employe possesses and applies comprehensive knowledge



of agencywide/campuswide IS architectures as well as IS concepts, principles and practices in the specialized functional area. The position independently resolves conflicts and problems through the skilled application of theoretical and practical knowledges of the specialized area as well as the application of general policies and agencywide/campuswide IS policies and standards. Work assignments are difficult and complex and focus on IS as defined under Classifications for the appropriate job family. Positions at this level interact with agency or campus business managers and IS customers as well as other professional IS managers and staff in the completion of assigned duties.

The IS Specialist level requires performance of *technical* work in the area of Information Services. The appellant's position description shows that she performs administrative, management and procurement work, rather than *technical* Information Services work. Therefore, the appellant's position is not appropriately included in either of the two IS(C)Specialist classifications.

c. *Information Systems (PE) Enterprise Strategic Planning Specialist*

II. DEFINITIONS

For classification purposes, a position must meet the level, the job family and the classification definition.

A. Level

IS ENTERPRISE SPECIALIST

Positions at this advanced level work under general review with objectives and priorities established by overall work unit directives. There is little review of technical recommendations and solutions by a supervisor. Positions at this level will implement technical policies, standards and procedures, which impact on the enterprise IS functions. The employe possesses and applies comprehensive knowledge of IS architectures as well as IS concepts, principles and practices as applied in the specialized enterprise functional area. The employe independently resolves conflicts and problems through the application of general policies and IS policies and standards. The majority of work assignments are difficult and complex and focus on IS as defined under

definition section for the technical services job family. Positions in this classification **must** interact with multiple agency and/or campus business managers and IS customers as well as other professional IS managers and staff in the completion of assigned duties.

This standard also refers to *technical* work in the area of Information Services. As noted above, the appellant's position description shows that she performs administrative, management and procurement work, rather than *technical* Information Services work. Therefore, the appellant's position is not properly included at the IS Enterprise Specialist level.

*d. Administrative Policy Advisor 2*

A. Purpose of This Classification Specification

Positions allocated to this classification are limited to those which (1) have division-wide administrative policy responsibilities and report directly to the Division Administrator or Administrator's designee (i.e., Assistant Administrator, Deputy Administrator, Bureau Director) or (2) have agency-wide administrative policy responsibilities and report directly to the Secretary or Secretary-s designees (i.e., Deputy Secretary, Executive Assistant, Office Director).

It is undisputed that the appellant's position reports to the Management Operations, Education & Development Section Chief, rather than to the Division Administrator, Secretary, or listed designee. Her position is excluded by the prefatory language in the specification, so summary judgment is appropriate as to the Administrative Policy Advisor 2 classification. The Commission notes the appellant filed a copy of the position description for the Smith position at the DOA Administrative Coordinator 2 level. Because the Smith position is at the 2 level, which has a different definition in the classification specifications, it is of no real value in the Commission's analysis.

*e. Information Technology Management Consultant*

The respondent's motion does not address this classification other than objecting to its consideration. Respondent's objection has been addressed above, and the ITMC class is properly before the Commission. However, it has been added after respondent filed its motion for summary judgment, the specifications for the ITMC classification are not in the file,<sup>2</sup> and the parties have not addressed that classification in terms of whether summary judgment is appropriate. Therefore, it would be premature for the Commission to analyze the ITMC classification in the context of respondent's current motion for summary judgment.

V. Allegations of discrimination/retaliation

Appellant contends that the reallocation decision was based on race and sex and also states that she intends to file a retaliation claim. If appellant wishes to pursue a claim under the Fair Employment Act, she may request a complaint form, along with related instructions, from the Commission. There is a time limit for filing under the Fair Employment Act.<sup>3</sup>

VI. Allegation of conflict of interest

In her June 4<sup>th</sup> submission, appellant informed the Commission of what she "perceive[s] as a conflict of interest." Appellant stated that the father of her children "was Executive Assistant in DER when DER began and continued reviewing my position for reallocation," that respondent's representative "notarized the documents my ex-husband brought to her on State time for the purpose of suing me to protract family

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<sup>2</sup> The file merely contains a position description for the Langlois position classified at the ITMC level.

<sup>3</sup> Appellant asked that the Commission hold her appeal in abeyance until she files her charge of discrimination. Respondent's motion for summary judgment has been fully briefed and any discrimination/retaliation claim would be subject to an investigation. Given these circumstances, there is not a sufficient basis for holding the appeal in abeyance.

court litigation" and that her husband "was influencing classification decisions about my position and by the time he left DER, the mold was cast and the damage done."

The Commission has the authority to review reallocation decisions made by respondent DER pursuant to §230.44(1)(b), Stats. The proceeding before the Commission is a *de novo* proceeding, rather than merely a review of DER's original approach to the transaction. Regardless of the degree of soundness of the original process followed by DER, the Commission bases its decision on the undisputed facts established relative to the motion for summary judgment. *See Swim & Wilkinson v. DER, 92-0476, 0613-PC, 1/16/97.* A perceived conflict of interest, as described by appellant, does not affect the undisputed facts material to this ruling.

VII. Motion to compel

On June 14, 1999, appellant filed a "motion for compelling DER to furnish documents." While parties to cases before the Commission may pursue discovery, it is unclear whether appellant made a discovery request before filing her motion to compel. The Commission will schedule another telephone conference to discuss this topic as well other topics relating to the processing of this matter.

ORDER

Appellant is permitted to revise the statement of issue to include a reference to the Information Technology Management Consultant classification. Respondent's motion for summary judgment is granted as to the Information Systems (C) Comprehensive Specialist, Information Systems (C) Program Area Specialist, Information Systems (PC) Enterprise Strategic Planning Specialist and Administrative Policy Advisor 2 classifications. The Commission will schedule a telephone conference with the parties.

Dated: June 30, 1999

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

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JUDY M. ROGERS, Commissioner